

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

13

WAYNE H. NORMAN,  
Plaintiff,

Civil Action File No.

vs.

DUNHAM'S SPORTS, INC.,  
Defendant.

Case: 2:16-cv-11327  
Judge: Edmunds, Nancy G.  
MJ: Grand, David R.  
Filed: 04-11-2016 At 09:42 AM  
IFP NORMAN v DUNHAM's SPORTS I  
NC (dat)

**ORIGINAL COMPLAINT**

NOW comes the Plaintiff, WAYNE H. NORMAN, by and through himself and for his Complaint against the Defendant, DUNHAM'S SPORTS, INC., states as follows:

**NATURE OF THIS ACTION**

1. Plaintiff brings this action for actual and statutory damages arising out of and relating to the conduct of DUNHAM'S SPORTS, INC., (hereinafter DS), to include all of its affiliates, subsidiaries, and/or related entities, as well as all persons and entities acting on behalf of both parties, including but not limited to both parties, in negligently, knowingly, and/or willfully contacting Plaintiff on his

cellular telephone without his prior express consent within the meaning of the TCPA.

2. This is an action for actual and statutory damages for violations of the Telephone Consumer Protection Act (hereinafter, "TCPA"), 47 U.S.C. section 227 *et seq.*

3. 'DS' has violated the TCPA, by contacting the Plaintiff on his cellular telephone via an "automatic dialing system," as defined by 47 U.S.C § 227(a)(1), without prior express consent within the meaning of the TCPA.

#### **JURISDICTION & VENUE**

4. Jurisdiction arises under the TCPA, pursuant to 28 U.S.C. section 1331.

#### **PARTIES**

5. WAYNE H. NORMAN, (hereinafter, "Plaintiff"), is a natural person who resides in the county of Shelby, state of Tennessee.

6. DUNHAM'S SPORTS, INC., (hereinafter, "Defendant"), is a company with an address of 5607 New King Drive Suite #125 Troy, Michigan 48098, and is a "person" as defined by 47 U.S.C. section 153(39).

<sup>1</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*

**THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**  
**(TCPA) 47 U.S.C §227**

7. In 1991, Congress enacted the TCPA in response to a growing number of consumer complaints regarding certain telemarketing practices.

8. The TCPA regulates, inter alia, the use of automated telephone equipment, or “predictive-dialers”, defined as equipment which “has the capacity...(a) to store or produce telephone numbers to be called, using a random or sequential number generator; and (b) to dial such numbers. 47 U.S.C. § 227(a)(1). Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of auto-dialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.<sup>2</sup>

9. According to findings by the Federal Communications Commission (FCC), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.<sup>3</sup>

<sup>2</sup> 47 U.S.C. § 227 (b)(1)(A)(iii). <sup>3</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd. 14014 (2003).

10. The TCPA prohibits the use of automatic telephone dialing systems and the prerecorded messages to call wireless devices. § 227(b) prohibits... the use of automated telephone equipment; (1) Prohibitions..."It shall be unlawful for any person within the United States or any person outside the United States if the recipient is within the United States—..."

### **A BRIEF OVERVIEW OF TEXT MESSAGING**

11. In recent years, marketers who often have felt stymied by federal laws limiting solicitation by telephone, facsimile machine, and email have increasingly looked to alternative technologies through which to send bulk solicitations cheaply.

12. One of the newest types of such bulk marketing is to advertise through Short Message Services. The term "Short Message Service" or "SMS" describes a messaging system that allows cellular telephone subscribers to use their cellular telephones to send and receive short text messages, usually limited to 120-150 characters.

13. An "SMS message" is a text message call directed to a wireless device through the use of the telephone number assigned to the device. When an SMS message call is successfully made, the recipient's cell phone rings, alerting him or her that a call is being received.

14. Unlike more conventional advertisements, SMS calls, and particularly wireless or mobile spam, can actually cost their recipients money, because cell phone users

must frequently pay their respective wireless service providers either for each text message call they receive or incur a usage allocation deduction to their text plan, regardless of whether or not the message is authorized.

15. Most commercial SMS messages are sent from “short codes” (also known as “short numbers”), which are special cellular telephone exchanges, typically only five or six digit extensions, that can be used to address SMS messages to mobile phones. Short codes are generally easier to remember and are utilized by consumers to subscribe to such services such as television program voting or more benevolent uses, such as making charitable donations.

16. A short code is sent to consumers along with the actual text message and conclusively reveals the originator of the SMS message.

17. Text messages are “calls” within the purview of the TCPA. *See Satterfield v Simon & Schuster, Inc.*, 569 F.3d (9<sup>th</sup> Cir. 2009).

### **ALLEGATIONS OF FACT**

18. On or about the afternoon of November 19<sup>th</sup>, 2015, Plaintiff began being bombarded with the most egregious solicitation text messaging campaign from the Defendant utilizing SMS code **556-78**.

19. Due to similar solicitation calls, Plaintiff placed his cellular telephone number (682) 241-8688, on the national “Do-Not-Call registry in May of 2014 to cease such solicitation calls.

20. The first text message Plaintiff received stated, "Dunham's Sports: We like you. We like saving you money. Heres a 20% off 1-item coupon:

<http://surl.it/2N8Y5> Reply STOP to cancel msg&data rates may apply."

21. Confused, Plaintiff simply replied, "Who is this?" This simple reply started a barrage of egregious unsolicited text messages from the Defendant and responses from the Plaintiff. Plaintiff texted 'I don't know who you are but discontinue texting me!!' yet the 'sarcastic' text messages continued. This blatant disregard of Plaintiffs request was deplorable, and intentional.

22. Plaintiff has never provided his cellular phone number to the Defendant or given his prior express consent to be called, whether on his own or on behalf of any third party.<sup>4</sup>

23. The Defendant's telephone calls to Plaintiffs cellular telephone utilizing an "an automatic telephone dialing system" for non-emergency purposes and in the absence of the Plaintiff's prior express consent violated 47 U.S.C. § 227(b)(1)(A).

24. Under the TCPA and pursuant to the FCC's July 10<sup>th</sup>, 2015 Declaratory Ruling, the burden is on the Defendants to demonstrate that Plaintiff provided express consent within the meaning of the statute.

<sup>4</sup> In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, (FCC Declaratory Ruling), 23 F.C.C.R. 559, 23 FCC Rcd. 559, 43 Communications Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (Jan 4, 2008).

25. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

26. Plaintiff suffered damages in the form of text message, data, and other charges to his cellular telephone plan.

### **QUESTIONS OF LAW**

27. Questions of law and fact include, but are not limited to, the following:

- a. Whether Defendant made non-emergency calls to Plaintiff's cellular telephone using an automatic telephone dialing system or artificial or prerecorded voice;
- b. Whether Defendant conduct was knowing and/or willful;
- c. Whether each Defendant is liable for damages pursuant the TCPA.

### **COUNT I-TCPA**

28. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

29. Without prior express consent, the Defendant contacted the Plaintiff at least ten (10) times by means of automatic telephone calls at a cellular telephone or pager in violation of 47 U.S.C. section 227(b)(A)(iii).

30. The phone calls were made to Plaintiff without the number being provided to Defendant, and without the prior express consent of Plaintiff.

### **PRAYER FOR RELIEF**


- a) As a result of the Defendant's knowing and/or willful violations of 47 U.S.C.

§ 227 et seq., Plaintiff is entitled to treble damages of up to \$1,500.00 for each and every call in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3);

b) An award of all fees and costs incurred by Plaintiff;

c) All other cost the Court sees justifiable under the law.

Respectfully submitted,



Wayne H. Norman

4357 Wanatah

Memphis, TN 38109

[whnorman@hotmail.com](mailto:whnorman@hotmail.com)



CIVIL COVER SHEET

Case 2:16-cv-11327  
Judge: Edmunds, Nancy G.

MJ: Grand, David R.

Filed: 04-11-2016 At 09:42 AM

IFP NORMAN v DUNHAM's SPORTS I  
NC (dat)

This civil cover sheet and the information contained herein neither replace nor supplement the rules of court. This form, approved by the Judicial Conference of the United States, is to be used in all cases of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

WAYNE H. NORMAN

(b) County of Residence of First Listed Plaintiff SHELBY  
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number) 888888

DUNHAM'S SPORTS, INC.

County of Residence of First Listed Defendant OAKLAND  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) 26125

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input checked="" type="checkbox"/> 880 Securities/Commodities Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
47 USC 227

Brief description of cause:

Violation of the Telephone Consumer Protection Act, ("TCPA") 47 USC 227 et seq.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

## DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

March 18, 2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Is this a case that has been previously dismissed?

☐ Yes  
☐ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes  
☐ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :

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## New LawsUIT Check List

Instructions: Put a check mark in the box next to each appropriate entry to be sure you have all the required documents.

<input checked="" type="checkbox"/>	Two (2) completed Civil Cover Sheets.	Case: 2:16-cv-11327 Judge: Edmunds, Nancy G. MJ: Grand, David R. Filed: 04-11-2016 At 09:42 AM IFP NORMAN v DUNHAM's SPORTS I NC (dat)
<input checked="" type="checkbox"/>	Enter the number of defendants named in your lawsuit in the blank below, add 2 and then enter the total in the blank.  <div style="display: flex; align-items: center; justify-content: center;"> <div style="text-align: center; margin-right: 10px;"> <input type="checkbox"/> 1 # of Defendants         </div> <div style="text-align: center; margin-right: 10px;">           + 2 = 3 Total         </div> <div style="text-align: center;">           Complaints.         </div> </div>	
	Received by Clerk: <input checked="" type="checkbox"/> Addresses are complete: <input checked="" type="checkbox"/>	

<input type="checkbox"/>	If any of your defendants are <b>government agencies</b> : Provide two (2) extra copies of the complaint for the U.S. Attorney and the Attorney General.
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If Paying The Filing Fee	If Asking That The Filing Fee Be Waived
<input type="checkbox"/>	<input checked="" type="checkbox"/>
Current new civil action filing fee is attached.  Fees may be paid by check or money order made out to:  <div style="text-align: center;">Clerk, U.S. District Court</div>	Two (2) completed Application to Proceed in District Court without Prepaying Fees or Costs forms.
Received by Clerk: _____ Receipt #: _____	Received by Clerk: <u>DT</u>

Select the Method of Service you will employ to notify your defendants:

Service via Summons by Self	Service by U.S. Marshal (Only available if fee is waived)	Service via Waiver of Summons (U.S. Government cannot be a defendant)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Two (2) completed summonses for each defendant including each defendant's name and address.	Two (2) completed <b>USM – 285 Forms</b> per defendant, if you are requesting the U.S. Marshal conduct service of your complaint.  <input checked="" type="checkbox"/> Two (2) completed <b>Request for Service by U.S. Marshal</b> form.	You need not submit any forms regarding the Waiver of Summons to the Clerk.  <u>Once your case has been filed, or the Application to Proceed without Prepaying Fees and Costs has been granted, you will need:</u> <ul style="list-style-type: none"> <li>One (1) <b>Notice of a Lawsuit and Request to Waive Service of a Summons</b> form per defendant.</li> <li>Two (2) <b>Waiver of the Service of Summons</b> forms per defendant.</li> </ul>
Received by Clerk: _____	Received by Clerk: <u>DT</u>	Send these forms along with your filed complaint and a self-addressed stamped envelope to each of your defendants.

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Note any deficiencies here:

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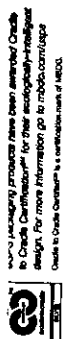
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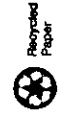
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